1952.

File No. 0 minimum wages/52

Legal Department-

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Subject:—

Opinions under the Minimum Wages Act, 1948

C O N T E N T S

Legal Department File No. 0. Minimum Wages/...

Sr. No.	L.I./	O.No.	Subject	pages
			Opinions under the Minimum Wages Act 1948.	
1.		18122/E 31-10-52	Whether the employees of the Bombay State Road Transport Corporation can be exempted under section 26(2)	1-3

M.E.D. 18-6-56 C.5

It would not be feasible to issue a notification under sub-section(2) of section 26 of the Minimum wages Act, 1948, exempting the State Road Transport Corporation from the operation of any or all of the provisions of the Act. That sub-section provides for such exemption in respect of all or any class of employees employed in any scheduled employment or in respect of any locality where sheduled employment is carriedx on. The exemption contemplated is, therefore, necessarily in respect of the entire scheduled employment- in this instance public public motor transport- and not in respect of any individual concern in that employment, such as the Bombay state Road Transport Corporation. In the notifications already issued classes of employeesx have been specified, and it is obvious that the entire class of employees in the State Road Transport Corporation is not the kind of class of employees contemplated by sub-section(2). Any exemption in favour of an individual concern is also liable to be challenged on the ground of discrimination under article 14 of the Constitution. Moreover, the exemption under sub-section(2) can only be for a specified period which itself must be controlled by the provisions of clause(a) of sub-section(1) of section 3. In any case, a notification having retrospective effect is not permissible unless the Act itself contemplates and expressly permits a retrospective subordinate legislation (see Stewart v. Brojendra Kishore Roy Chaudhury, (1939) 2 Federal Law Journal p.112)

Similar difficultes will naturally arise in respect of the proposal regarding zones which, moreover, has to be consideredmby the Advisory Committee. Regardin spreadover and overtime, it may be permissible for Government to take action under sections 13 and 14, but in view of what has been said befofe, such action can

only be prospective and not retrospective.

Having regard to all these difficulties and also having regard to the special conditions of better employment given by the Bombay State Road Transport Corporation, the best course would be to undertake legislation withdrawing the Bombay State Road Trapsport Cropor.tion from the scope of the the Minimum Wages Act, 1948. Such legislation can of course be retrospective. However, the Government of India will have to be consulted and their concurrence obtained beforhand.

Sd/-
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Remembrancer of Legal Affairs.

M.R.D.
18-6-56
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